



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE:



Office: Nebraska Service Center

Date:

AUG 29 2000

IN RE: Applicant:



APPLICATION: Application for Travel Document Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. 1203

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Georgia who is seeking to obtain a reentry permit pursuant to section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1203.

The director denied the application after determining that the applicant was not in the United States at the time the application was filed.

On appeal, the applicant states that while he agrees that every applicant for a reentry permit must be in the United States when the application is filed, his letter sent as attachment to the Form I-131 application was never taken into consideration. He explains that at the time of applying for the permit, he had not been in the United States for almost eight months, and he would have had time to return to the United States if the Service had promptly responded to his letter.

In pertinent part, section 223 of the Act provides that an alien lawfully admitted for permanent residence who intends to visit abroad and return to the United States to resume that status may make an application for a permit to reenter the United States.

With certain exceptions¹, regulations at 8 C.F.R. 223.2(b) allow for the approval of a reentry permit if the application (Form I-131) is filed by a lawful permanent resident or conditional permanent resident. Additionally, regulations at 8 C.F.R. 223.2(b) require that the application be filed with the Service prior to departure from the United States.

Further, regulations at 8 C.F.R. 103.2(a)(1) provide that every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instruction on the form. The instructions attached to the Form I-131 state in pertinent part:

General Filing Instructions.A reentry permit or refugee travel document may be sent to a U.S. Consulate or INS office overseas for you to pick up if you request it when you file your application. However, you must be in the U.S. when you file the application.

¹See 8 C.F.R. 223.2(c) providing ineligibility where (1) a prior reentry permit is still valid, (2) certain extended absences have been taken by the applicant, or (3) the applicant is entitled to nonimmigrant diplomatic or treaty status and has not submitted the applicable waiver and/or tax exemption form.

The application for reentry permit was filed on June 25, 1999. The record, however, reflects that the applicant departed from the United States on November 4, 1998.

While the applicant claims that he would have had time to return to the United States if the Service had made a prompt response to his letter, the record reflects that Service Form I-797C was sent to the applicant on July 23, 1999 informing him that his application for a travel document was received on June 25, 1999, and that it usually takes 90 to 120 days from the date of the receipt to process the application.

As required by 8 C.F.R. 223.2(c), the applicant was not in the United States at the time the application for a permit to reenter the United States was filed with the Service. Therefore, the application cannot be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

A lawful permanent resident of the United States in possession of a resident alien card (Form I-151) who seeks to reenter the United States after an absence of one year and who does not possess a reentry permit may apply to the nearest U.S. consular office for a returning resident visa.

ORDER: The appeal is dismissed.